IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

FIRST APPEAL NO. 141 OF 2000

1. Special Land Acquisition Officer,
(S), (S.I.P.), ID Complex, Gogal,
Margao, Goa.

2. Executive Engineer, Works Div., IX,
ID, Gogal, Margao. .... Appellants

Versus

Shri Cristiano D'Souza,
Arossim, P.O. Cansaulim,
Goa. .... Respondent

Ms. W. Coutinho, Government Advocate for Appellants.
Shri P. S. Rao, Advocate for Respondent.

CORAM: **P.V. KAKADE, J.**
DATE: **18th August, 2006**

ORAL JUDGMENT

Heard learned Counsel for both the parties. Perused the record.

2. The State has preferred this appeal against the judgment and order passed by the District Judge, South Goa, Margao, allowing the respondent's-claimant's reference partly under Section 18 of the Land

Acquisition Act and holding that, the market value of the acquired land admeasuring 1225 square meters coming to the share of the claimant was fixed at Rs. 100/- per square meter. The claimant was also held to be entitled to other statutory benefits under the law.

3. Vide notification under Section 4 of the Land Acquisition Act, published in the Official Gazette dated 11/05/1987, the State acquired the land from Davorlim Village for the purpose of Salaulim Irrigation Project. This included an area of 2450 square meters of Bharad land from survey no.81 of Davorlim Village. By award dated 31/01/1989, the Special Land Acquisition Officer (SLAO) awarded compensation at the rate of Rs. 15/- per square meter. The compensation was equally shared by the claimant and one Numenio T. Aquim D'Souza. The claimant not being satisfied with the compensation awarded, filed the application under Section 18 of the Land Acquisition Act before the SLAO who had referred the matter to the District Court. Hence the reference.

4. The claimant claimed right to portion admeasuring 1225 square meters of land and compensation at the rate of Rs. 400/- per square meter.

5. The Sate challenged the reference on various grounds, inter alia, denying the allegation that the market rate of the impugned land was anything more than what was granted by the SLAO. It was also denied that the market value of the said land was at the rate of of Rs. 400/- per square meter and as such the reference was sought to be dismissed.

6. The learned reference Court adjudicated the dispute on merits on the basis of available evidence, which included oral and documentary evidence led by the claimants, though no evidence was led on behalf of the State. The reference Court came to the conclusion, on the basis of such evidence that the market rate of the impugned land was Rs. 100/- per square meter and not Rs. 400/- per square meter as alleged by the claimant and as such reference came to be partly allowed in the aforesaid manner. Hence the present appeal.

7. At the out set, it may be noted on perusal of the entire record including that of claimant's witnesses and documents, that it is quite obvious that the acquired land is less than 100 meters away from the Margao-Quepem main road and is about 100 meters away from the electricity office and about 500 meters away from Chowgule College and

about 200 meters away from the primary school. There also appears to be a Church at a distance of less than one km. and a mosque about 250 meters away from the acquired land. Konkan Railway office also appears to be situated, since 1986-87, adjacent to the acquired land and the ONGC office is opposite the Aquem-Davorlim road. Evidence further shows that, the electricity, water pipeline, telephone and transport facility is available and bus stop is just opposite the property. The residential house of Chitnis is close-by and there are also other residential houses in the close proximity.

8. The evidence further shows that one Mr. Virginkar had sold the property which is located at the distance of less than 300 meters away from the acquired land, at the rate of Rs. 250/- per square meters and the sale deed was of the year 1987-88. The State Government has purchased the land in Gogol in 1983 at the rate of Rs. 200/- per square meter which was also less than 2 kms. away from the property.

9. Claimant's another witness Mr. Sakharam Bhende appears to be expert witness, who has inspected the property and has stated that the land admeasuring 2450 square meters was acquired by the SIP in 1986. According to him, the land was bharad type, levelled at road level, having

hard soil, rocky type and was suitable for construction. This witness has further stated that the acquired land abuts the road going from Margao to St. Jose de Areal and he has given distances from various amenities and facilities from the impugned land.

10. This evidence alongwith the evidence of other witnesses as well as documents on record are sufficient to conclude that the acquired land admeasuring 1225 square meters belonging to the claimant is bharad type of land without any encumbrances of Mundkars or tenants and trees and this was the land suitable for construction, since it lies within a residential locality and has all the amenities and facilities nearby. Further, admittedly, the acquired land was touching the public road going from Margao to St. Jose de Areal, on the northern side and another road on the western side which can be seen from the sketch on record. No doubt that expert witness has valued the land at the rate of Rs. 300/- per square meter which obviously cannot be accepted because the visit of the said witness was after about 11 years from the date of publication of notification under Section 4 of the Land Acquisition Act in respect of the land in question and there is no evidence that developments deposed to by the expert were positively available at the time of Section 4 notification.

11. The perusal of the judgment of the lower Court appears to have taken into account all the relevant aspects while holding that the market rate of the property on the relevant date was Rs. 100/- per square meter which view as can be seen from the record, is based on available evidence on record.

12. The learned Government pleader submitted that the award given by the SLAO is proper and, therefore, there was no scope for any enhancement in the compensation. However, I prefer to disagree with this proposition taking into account evidence on record. I am of the view that the reference Court has properly assessed the entire evidence on record while coming to the conclusion that the proper market price of the acquired land admeasuring 1225 square meters was Rs. 100/- per square meter. Therefore, in view of these aspects, I do not propose to interfere in the findings recorded and reasons adopted by the learned reference Court. In the result, order passed by the reference Court stands confirmed and consequently the appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

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